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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/817,645	04/02/2004	Niall R. Lynam	DON01 P-1148	2833
28101	7590	01/12/2005	EXAMINER	
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GRAND RAPIDS, MI 49588-8695			2872	
			PAPER NUMBER	

DATE MAILED: 01/12/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<p align="center">Office Action Summary</p>	Application No. 10/817,645	Applicant(s) LYNAM ET AL	
	Examiner Ricky D. Shafer	Art Unit 2872	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 22 October 2004.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 60-117 is/are pending in the application.
- 4a) Of the above claim(s) 83 and 85 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 60-82, 84 and 86-117 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>04/02/2004</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. Applicant's election of species "B" in the reply filed on 10/22/2004 is acknowledged.

Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)).

2. Claims 83 and 85 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected species, there being no allowable generic or linking claim.

Election was made **without** traverse in the reply filed on 10/22/2004.

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 60-62, 64-66, 69-76, 92, 95-98, 100-102 and 104-107 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tobin, Jr ('952) in view of Holt ('539).

Tobin, Jr discloses an automobile exterior side view mirror system comprising an exterior side view mirror assembly (10) adapted for attachment to a side of an automobile; said exterior side view mirror assembly including a reflective element assembly (30,32); said reflective element assembly including a first reflective element (30) having unit magnification and a second reflective element (32) having a curvature; said first reflective element and said second reflective element supported at a support element (35), wherein said support includes a frame (20) and a backing plate (14); said second reflective element disposed

Art Unit: 2872

at an outer, upper portion as well as the lower portion of said reflective element assembly when said reflective element assembly is included in said exterior side view mirror assembly and when said exterior side view mirror assembly is attached to the side of an automobile; said second reflective element supported on said support element adjacent to and separate from said first reflective element; a demarcation element (40) of a dark (red) color adjacent said first reflective element and said second reflective element; and wherein the portion of said second reflective element adjacent said demarcation element has a front surface generally coplanar with the front surface of said first reflective element, wherein the second reflective element inherently includes a rearward field of view having a principal axis which is different from a principal axis of the rearward field of view of the first reflective element due to the convex characteristics of the second reflective element which generally extends the rearview field of view outwardly and downwardly with respect to a longitudinal axis of the automobile, note Fig. 4 along with the associated description thereof, except for the demarcation element positioned between first and second reflective elements.

Holt ('539) teaches it well known to use a segment of a perimeter (bezel) portion to serve as a demarcation element in the same field of endeavor for the purpose of providing a clear dividing line and/or demarcation between first and second reflective elements so as to provide a driver of a vehicle with a two separate views.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the perimeter (bezel) portion of Tobin, Jr to include an segment (demarcation element) between the first and second reflective elements, as taught by Holt, in order to provide a clear dividing line and/or demarcation between the first and second reflective

Art Unit: 2872

elements so as to provide a driver of a vehicle with a two separate views as well as increasing the over structural strength of the exterior side view mirror assembly.

5. Claims 67, 68, 84, 103, 108-117 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tobin, Jr ('952) in view Holt ('539) as applied to claims 60-62, 64-66, 69-76, 92, 95-98, 100-102 and 104-107 above, and further in view of Enomoto ('166) or Mizuta et al ('302).

Tobin, Jr in view of Holt discloses all of the subject matter claimed, note the above explanation, except for an electrical actuator to adjust the orientation of the reflective element assembly.

Enomoto ('166) and Mizuta et al ('302) each teach it well known to use electrically operated actuator(s) in the same field of endeavor for the purpose of adjusting the position and/or orientation of a reflective element.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the reflective element assembly of Tobin, Jr to include electrically operable actuator(s) as is well known and commonly used and employed in the mirror art, as taught by Oskam or Enomoto, in order to adjust the position and/or orientation of the reflective element assembly.

Moreover, it has been held that providing automatic means to replace manual activity, which accomplishes the same result, involves only routine skill in the art. Note In Re Venner, 120 USPQ 192.

As to the limitations of claim 84, it is well known to use breakaway exterior side view mirror assemblies in the same field of endeavor for the purpose of folding the position and/or

Art Unit: 2872

orientation of a mirror. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the exterior side view mirror assembly of Tobin, Jr to include a break-away exterior side view mirror assembly, as is well known and commonly used and employed in the mirror art, in order to fold the position and/or orientation of the reflective element(s).

6. Claims 63, 77-82, 89-91, 93, 94 and 99 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tobin, Jr ('952) in view of Holt ('539) as applied to claims 60-62, 64-66, 69-76, 92, 95-98, 100-102 and 104-107 above, and further in view of Marhauer ('770).

Tobin, Jr in view of Holt discloses all of the subject matter claimed, note the above explanation, except for explicitly stating that the curved reflective element includes at least one radius of curvature in the range of about 4000 mm to about 100 mm.

Marhauer ('770) teaches it well known to select a curvature of a reflective element within the range recited by applicant in the same field of endeavor for the purpose of avoiding distortions.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the curvature of the curved reflective element of Tobin, Jr to include a value, as taught by Marhauer, in order to avoid distortions.

As to the limitations of claims 77-82, 89-91, 93 and 94, it is well known to use an a curved reflective element having downward and outward angles within the range recited by applicant in order to optimize and/or view a particular rearward field of view of interest.

Therefore, it would have been obvious and/or within the level of one of ordinary skill in the art at the time the invention was made to modify the curved reflective element of Tobin, Jr to

Art Unit: 2872

include downward and outward angles within the range recited by applicant in order to optimize and/or view a particular rearward field of view of interest, based on user specifications.

Moreover, it would have been obvious to one of ordinary skill in the art at the time the invention was made to angle the curved reflective element of Tobin, Jr to the selected range(s) recited by applicant in order to view of particular rearward field of view of interest, since it has been held that where the general conditions of a claim are disclosed in the prior art or discovering an optimum or workable ranges involves only routine skill in the art. Note In re Aller, 105 USPQ 233 and In re Boesch, 617 F.2d 272, 205 USPQ 215 (CCPA 1980).

7. Claims 86-88 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tobin, Jr ('952) in view of Holt ('539) as applied to claims 60-62, 64-66, 69-76, 92, 95-98, 100-102 and 104-107 above, and further in view of Bauer et al ('864) or Kanazawa ('367).

Tobin, Jr in view of Holt discloses all of the subject matter claimed, note the above explanation, except for the reflective element(s) being a variable reflectance (electrochromic) element.

Bauer et al ('864) and Kanazawa ('367) each teach it well known to use electrochromic mirrors in exterior side view mirrors in the same field of endeavor for the purpose of providing variable reflectance and/or reducing glare

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the reflective element(s) of Tobin, Jr to include variable reflectance (electrochromic) element(s), as taught by Bauer et al or Kanazawa, in order to reduce glare.

Art Unit: 2872

8. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969). A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

9. Claims 60, 61, 64, 66-68, 72, 73, 75, 76, 84, 92, 95, 96, 97, 100-105 and 108-113 rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 3 of U.S. Patent No. 6,522,451.

U.S. Patent 6,522,451 to Lynam discloses all of the subject matter claimed, note claim 3, except for explicitly stating that the portion of the second reflective element adjacent the demarcation element has a front surface generally coplanar with the front surface of the first reflective element.

Art Unit: 2872

It well known to arrange the front surfaces of first and second reflective elements to be substantially coplanar in the same field of endeavor for the purpose of reducing distortions.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the front surfaces of the first and second reflective elements to be substantially coplanar, as is well known the mirror art, in order to reduce distortions.

As to the limitations of claim 68, it well known to use electrically-operated actuator(s) in the same field of endeavor for the purpose of adjusting the position and/or orientation of a reflective element.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the actuator of U.S. Patent 6,522,451 to Lynam to include electrically operable actuator(s) as is well known and commonly used and employed in the mirror art in order to adjust the position and/or orientation of the reflective element assembly.

Moreover, it has been held that providing automatic means to replace manual activity, which accomplishes the same result, involves only routine skill in the art. Note In Re Venner, 120 USPQ 192.

As to the limitations of claim 84, it is well known to use breakaway exterior side view mirror assemblies in the same field of endeavor for the purpose of folding the position and/or orientation of a mirror. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the exterior side view mirror assembly of U.S. Patent 6,522,451 to Lynam to include a break-away exterior side view mirror assembly, as is well known and commonly used and employed in the mirror art, in order to fold the position and/or orientation of the reflective element(s).

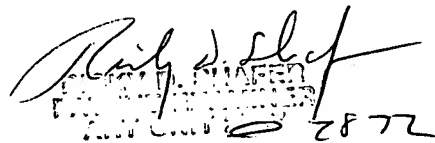
Art Unit: 2872

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ricky D. Shafer whose telephone number is (571) 272-2320.

The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

RDS

January 10, 2005

A handwritten signature in black ink, appearing to read "Ricky D. Shafer", is written over a faint, rectangular stamp. The signature is stylized and cursive. The stamp is partially obscured by the ink.